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# The American Political Science Review

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Vol. VII

FEBRUARY 1913

No. 1

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## A GOVERNMENT OF MEN

PRESIDENTIAL ADDRESS, THE NINTH ANNUAL MEETING OF THE  
AMERICAN POLITICAL SCIENCE ASSOCIATION,  
DECEMBER 28, 1912

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"In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end, it may be a government of laws, and not of men."

So runs the thirtieth article of the constitution adopted by the people of Massachusetts in their town meetings in the year 1780; and still a part of the fundamental law of this Commonwealth. The fine and sonorous phrase states two important principles: that in every proper government there should be three balanced departments; and that a government of laws must control not only the people but those charged with government—that is, that the rule is stronger than the rulers.

This principle of the supremacy of law over persons goes far back—the Old Testament is full of it: "Hearken, O Israel unto the statutes and unto the judgments which I teach you . . . . Ye shall not add unto the word which I command you, neither shall ye diminish from it." Plato said in his treatise on laws, "As for us, the principle of immutability dwells in us . . . . Nor are laws right which are passed for particular classes and not for the good of the whole state. States which have such laws are not polities but parties." Harrington more than a century before the Revolution wrote that a government in which

the laws "are made according to the interest of a man, or a few families, may be said to be the empire of men and not of laws."

Nor is the Massachusetts constitution the only analysis of the political philosophy of the English Commonwealth and the American Revolution. John Adams, who drafted the constitution, though not the particular clause just quoted, said of his work: "It is Locke, Sidney, and Rousseau, and De Mably reduced to practice." So the elder Pitt said, "where law ends, tyranny begins." So Hooker in his *Ecclesiastical Polity* "Of law there can be no less acknowledged, than that her seat is in the bosom of God, her voice the harmony of the world; all things in heaven and earth do her homage; the very least as feeling her care, and the greatest are not exempted from her power."

To question the authority of the Massachusetts state constitution in this place is daring, particularly if Locke and Rousseau are the right and left guards of its sturdy central thought. However, it is the province of the American Political Science Association to politically-scientifically inquire into any field or function of human government. The Massachusetts principle of 1780 is sound, if on investigation it can be shown that it adapts itself to the progress of time; that it is sound not only for 1780 but for 1912. Today you are in the hands of an ephemeral president, who asserts the "government of men" to be superior to the "government of laws;" and entertains no appeal from his decision. For the age of dissent and questionings is not over. Locke and Rousseau disputed the political doctrines of their time; and the American Revolution was originally only the announcement of a new governmental principle for the British Empire. Edmund Burke in 1777 disagreed with the government of laws:

"There are people who . . . have disputed whether liberty be a positive or a negative idea; whether it does not consist in being governed by laws without considering what are the laws, or who are the makers." As Burke hints, the touchstone is the ability of one or another type of government to ascertain and apply the will of the people for the benefit of the people; or in the words of Robert Hall: "Government is the creature of the people, and that which they have created they surely have a right to examine."

## SEPARATION OF POWERS

The doctrine of the separation of powers is based upon a distrust of public officials, which is typical of the post-Revolutionary period. The doctrine is contrary to the practice of Europe in the eighteenth century, when absolutism was the rule on the Continent. It has never prevailed in England, although Montesquieu in 1730 neatly described the supposed coordinate anatomy of the British government: unfortunately his results do not agree with the government as it was. The colonial governments did practice and dislike a separation between the executive and the legislative power—a distinction which they thought practical when they were able to choose their own executive.

The doctrine was carried into most of the other constitutions of the Revolutionary period; and upon it, after a brief experience of the parliamentary system of the old congress, the federal government was organized. Every State in the Union thereafter, went the same road, although any of them might, by amending its own constitution, set up the Canadian type of responsible government. It has spread into city governments, which have provided city councils on the one side, and dislocated mayors on the other; and probably would have added a local judiciary had it been allowed.

To the present age such long use seems a reason for replacing a thing with something new. Malvolio in bonds announced his opinion that, "the soul of our grandam might haply inhabit a bird." Certainly this Association does not object to the soul of an outworn government transmigrating into a livelier medium. There are no precedents in government which bind this worshipful company. We ask only has use approved the separation of powers? Far from it! At the very moment when it was set forth in stately phrase by the Massachusetts convention, it was thrown out of gear by the rest of the work of that convention, which gave to the governor and council a power of judicial pardons; 96 times in the year 1912 has the executive of Massachusetts thus recalled a judicial decision, and confused the separation of powers! By the same instrument the judiciary received two visible legislative powers: first, the right to submit opinions

on pending bills; second, the unwritten but implied power to set aside statutes as unconstitutional. The legislature, on its side, at that time was assured the power of choosing the heads of executive departments, and thereby encroaching on a sister department.

In the federal constitution of 1787 there are similar inconsistencies: the President shares in legislation by his veto power; and in judicial authority by the decisions of what are substantially administrative courts; while the standing committees of congress have possessed themselves of a considerable share of the executive business of the nation. Throughout the Union legislatures take an active part in the work of executive boards and departments, chiefly through their control over appropriations; and more and more all the executives claim responsibility for legislation. If the separation of powers is essential to good government, then we are without good government or the hope of it; for the drift throughout the country is clearly toward merging, or at least correlating, the three departments. Most American counties have ignored the separation between executive and legislative power; city commissions destroy it. The close connection between the judiciary and the legislative is sharply brought before us by the public uneasiness at the influence and authority of judges over laws duly placed upon the statute book. If a government of laws cannot be had without the traditional checks and balances, we might as well pass on to a government of men forthwith. The separation of powers breaks down because it has proved to be an artificial barrier against vigor in the conduct of the affairs of the American people.

#### GOVERNMENT OF LAWS

Is there a government of laws which can persistently give us both orderly and continuous government? Perhaps we are misled by the term. We know what laws of nature are: simply deductions and generalizations from observed facts. The law of gravity, the law of atomic weights, the law of natural selection—these are not arbitrary edicts made by the Almighty, but

simply a condensed statement of the truth of things. Similar laws may with less confidence be laid down on human relations: thus Gresham's law on circulating media; or the law of diminishing returns, are nothing more than statements that in human experience things go in a particular way; and under like circumstances will presumably continue to go that way.

Contrast with these notions our conception of statute law. What of the Sherman law, or the Payne-Aldrich law? Are they more than temporary rules of action, subject to change with every session of congress? Between law in the strict sense and law in the sense of the Massachusetts constitution, there is all the difference between a stream flowing through its natural bed; and water deflected artificially into a flume, which may be directed whither you will; or by a blow of an axe may be put out of operation altogether.

Just what did the fathers mean by "Government of Laws?" Very convenient is the idea of a realm of laws promulgated by an irresistible power from above. Our Puritan forefathers looked to the law of God as expounded by Moses as their guide and therefore the Connecticut statute of 1662 says, "If any person rise up by False Witness wittingly and of purpose to take away any man's life, he or she shall be put to death. Deut. 19. 16, 18, 19." But our statute books are full of enactments which cannot be found in Deuteronomy.

If the Mosaic Law is insufficient for the needs of this age, the enactments of human sovereigns are no more complete. What has become of the haughty "Law of the Medes and Persians that altereth not?" Who now obeys the capitulations of Charlemagne? Who accepts the decrees of Napoleon, Emperor of the French? Who practices the code of Hammurabi? Vestiges of ancient enactments we have, principles have been handed down; but the law of the written law is that it is never final. Law is no longer law unless it corresponds to the changes of the times. Who was the graceless youth who was forbidden entrance to Oxford because when asked to sign the Thirty-nine Articles he irreverently answered, "Forty of them, if you like!" Yet since his time the fortieth article has been added—the unchangeable

law has yielded before the non-conformist and the foreigner—you may enter Oxford now without any Articles at all.

The Massachusetts "Government of Laws" undoubtedly intended to include "natural law," a mass of precepts collected out of the experiences of the ages: partly a restatement of the severity of the Old Testament and the mercy of the New Testament; partly the accumulation of customs beginning no one knows where; partly the political literature of mankind, passing from land to land; partly the collections and treatises of publicists; partly formal declarations, constitutions and statutes framed by bodies of men. The "law of nature," which is invoked as the guide and protector of men, is after all simply what men now living suppose was believed by ancestors long since dead.

A true law of nature must be a universal law, applying to all mankind in all ages; but the natural law of the framers of the Massachusetts constitution was a law applicable only to Christians, for it is permeated by Scripture; meant only for Europeans, for it takes no account of the legal principles of the Orient; still farther confined to men of the English race, for it abounds in maxims of the English judges. Yet it was dear to our fathers. It was Pope who wrote "The State of Nature was the Reign of God." It was Patrick Henry who said in the first Continental Congress, "we are in a state of nature, Sir." "All America is in one mass." Our fathers appealed to the law of nature to help them out of their difficulties; and forthwith proceeded to amend it.

The Massachusetts convention in its phrase, "Government of Laws" could not have overlooked the common law of England which was applied in all the colonies. The new states did not foresee our present difficulties, arising from the application by the courts of the common law as superior to state statutes, and even modifying the meaning of state constitutions. The fathers looked upon the common law as a servant and not a master; and always recognized the power of a state by statute to alter it; while one commonwealth of them forbade its use as a rule by the State courts.

They meant also by "Government of Laws" an orderly system, clearly stated, so that people might know beforehand what was

the law which applied to them. There was to be no squabbling between litigants about the tribunal to which they should go; the rules of the courts were to be developed through previous contests and opinions; decisions once made were to be accepted as a settlement of the dispute.

The "Government of Laws" was intended to cover property rights, though it is a preposterous slander to say as Simons says of the federal constitution in his *Social Forces in American History*, "The organic law of this nation was formulated in secret session by a body called into existence through a conspiratory trick, and was forced upon a disfranchised people by means of a dishonest apportionment in order that the interests of a small body of wealthy rulers might be served." Still, property was in the minds of all the constitution makers of that period. John Adams advocated a senate in which "The rich and the well-born" might have their just influence. It was clearly the purpose of the Massachusetts convention that the government of laws should prevent a forcible transfer of property.

They meant also to protect minorities against the unforeseen and unjust action of majorities. Property owners, like others in the minority, were to be sheltered by laws as to the methods of legislation and administration; and by the mass of common and statute law bearing upon property rights, a quantity destined to be enormously increased.

In 1780 the people of Massachusetts were already committed to the control of two different systems of law: that of their state and that of congress; and in 1788 they accepted a far stronger system of federal law, and thus admitted that there was a regime of law above law, and constitution above constitution; that a government of laws could be secured under a federal system.

The government of laws was expected to bring about results by automatic action. The fathers started their machine of government and put upon it a variety of devices intended to keep the legislative boiler, the executive cylinder and the judicial flywheel every moment in harmony with each other. They recognized the changefulness of law, but they intended to bring changes about in a preordained fashion. They tried to make a



political machine which would work well with a poor fireman, a poor engineer, and a poor man at the shut-off valve.

So far as the government of laws means a rigid system acting slowly and heavily, alterable only with great difficulty, it does not today justify itself. Under it laws have been piled on laws in the effort to cover everything by statute and leave nothing to discretion. At the same time the sum of the laws is far below the necessities of the times. It is the nature of a rigid government of laws to feel that its technical organization is perfect; and therefore to oppose the methods of applying the popular will to the legislative machinery. The tendency of any political system is to perpetuate that system; and the government of laws needs somewhere reinforcement.

#### MEN IN GOVERNMENT

In the Massachusetts system, so honestly and painstakingly put together, lurks another great defect: it strives to minimize the human element in legislation and in government: "Government is not made," said Burke, "in virtue of natural rights . . . government is a contrivance of human wisdom, to provide for human wants." Laws are not made to be symmetrical but to protect and elevate mankind. As Emerson puts it, "But the wise know that foolish legislation is a rope of sand, which perishes in the twisting; that the state must follow, and not lead the character and progress of the citizen; the strongest usurper is quickly got rid of; and they only who build of ideas build for eternity." No system of laws is adequate which does not take into account the immense number of the American people; the variety of their race origin, of their employments and their needs. No laws are adequate which do not change with the combinations of individuals, for whom they are made. Every statute book will be torn across if it does not recognize the eternal conflict between personal rights and property rights.

"Before man made us citizens, great nature made us men" wrote Lowell; and the foundation of American government is that laws are made by men and must partake of their qualities

and defects. Laws are made by what men? By a special governing class; or the community as a whole; or individuals whom the community puts forward? Part of the theory of the framers of the Massachusetts constitution was that the government naturally would fall to a self-selected few; and this man's distrust of man, goes far back. Plato wrote, 2300 years ago, "Thus man had the wisdom necessary for the support of life, but political wisdom he had not; for that was in the keeping of Zeus."

It is a waste of time to go into that controversy, for Bacon long ago said that "We are much beholden to Machiavel and others, that write what men do and not what they ought to do." Like Burke we hold it "our duty in all soberness to conform our government to the character and circumstances of the several people who compose this mighty and sharply diversified mass." There is no accepted type of government within the United States except government by the people. In the last resort, government of laws is the government of men who have the right to make the laws; and none have the right to make the laws but ourselves.

In delegating that power we cast a great burden upon legislators; it is theirs to expand the constitutional principles into fruitful statutes; to choose among admitted means that measure which is wisest; to make the connection between the cold and barren law and warm, sentient human beings. The warp and the woof of law is human relations. We legislate about land; that is, about the use of land by human beings. We restrain corporations; that is, we lay inhibitions upon the men who act for the corporations. So with criminal law; we say that the burglar who shoots a policeman is a murderer, and the policeman who shoots a burglar is a hero—what makes the distinction? The criminal law, penetrating into the hearts of men to see what their motives are. You cannot legislate against floods, or short crops, or selfishness or bad logic. The whole food and substance of law is humanity.

This human side of law is so obvious nowadays that great efforts are made to seek authority for it at the fountain head, by giving directly to legislative acts that authority of a majority of the people which we recognize as decisive in elections. Whether

that be wise or unwise, there can be no doubt, constitutional or moral, that the community may legislate by the initiative and the referendum if it so chooses; and its advance from one state to another, the flame running from one torch to its neighbor, reveals it as a method on which we must speedily make up our minds. I am one of those who believe in the largest trust in my fellow-men—to a genuine liking for Thomas, Richard and Henry; for an interest in their views as to their own welfare and that of their neighbors. I am willing to be outvoted by them—not too regularly. I side with Henry George in his daily text, “I am for men.” I side with Walt Whitman,

“I am of old and young, of the foolish as much as the wise;  
Regardless of others, ever regardful of others,  
Maternal as well as paternal, a child as well as a man,  
Stuff'd with the stuff that is coarse, and stuff'd with the stuff  
that is fine;  
One of the Great Nation, the nation of many nations, the smallest  
the same, and the largest the same;  
A southerner as soon as a northerner—a planter nonchalant and  
hospitable, down by the Oconee I live;  
A Yankee, bound my own way, ready for trade, my joints the  
limberest joints on earth, and the sternest joints on earth;—  
A learner with the simplest, a teacher with the thoughtfulest;  
A novice beginning, yet experiment of myriads of seasons;  
Of every hue and caste am I, of every rank and religion;  
A farmer, mechanic, artist, gentleman, sailor, quaker;  
A prisoner, fancy-man, rowdy, lawyer, physician, priest.”

Yet no people, however sage, however sound, however eager, can move straightforward in any direction without a plan and without leaders. Outside of official life are several groups of individuals who mould their fellow man, and prepare the way for law making. The most obvious is the reformer; who for two hundred years has been appealing to the moral sense and justice of his American countrymen. Rarely he reaches office; usually he is a critic, often he is a crank. American government owes

a great debt to these self-designated counsel of new client-principles. What would the world be without these one-sided men, who by their public addresses, their books, their organizations, push on the unpopular cause, which in due time shall capture the citadel and install itself sovereign? Take for example our sister Society for Labor Legislation; how much it does and will do to concentrate public interest and power upon one of the greatest problems of civilization. The reformer brings to law-making that breezy emotion, that appeal to sentiment, that incessant action, that faith in his fellow men, which is lost in the calmer decisions of the cabinet or the court-room. As Emerson puts it in his imperishable *Politics* "I have just been conversing with one man, to whom no weight of adverse experience will make it for a moment appear impossible, that thousands of human beings might exercise toward each other the grandest and simplest sentiments, as well as a knot of friends, or pair of lovers." Government needs that spirit, that brotherhood, that intense, narrow and immensely effective propaganda.

Alongside the reformer, is the journalist, who helps to make government by his steam-pump ability to suck up information and to discharge it in a broad diurnal stream. General Information is not the best commanding general for army or for nation, but he furnishes material for discussion. That is, if people accept him. One of the mournful things of our time is the skepticism of the newspaper reader, who indeed must have a believing mind if he accepts both the news of today and its denial of tomorrow. Till a few years ago most journalists were live beings that spoke what they were full of; and were taken at their face value; wrongheaded or righthheaded, fair or prejudiced, sweet-voiced or brutal, at least each man spake his own tongue, as does today the last survivor of that mighty race, Henry Watterson. Newspapers nowadays are curiously extra-human; edited by men who do not give them color; no longer strict and faithful party servants: constricted here and there by influences which outsiders little understand; no longer fountains of public sentiment, but conduits fed, one hardly knows how, except that some of them reek. Yet we all read the papers, believe such parts of

them as seem to show that things are going our way, and should not have the stuff from which to frame our criticisms of the press, but for their exuberant news columns.

Another non-political person who affects the "government of men" is the writer on public questions. Sometimes he is a journalist, sometimes a gentleman of leisure, sometimes a college professor, sometimes a Socialist—if by Socialist we mean, as we usually do, the man who thinks on public questions differently from the men in our club. Far be it from the president of an association made up of the most distinguished and trenchant of his class to belittle its powers; for I see before me authors and teachers who with their quills, penetrate the tough hide of the public. They mightily aid in ballot reform, civil service reform, nomination reform, efficiency in government, and other like good alterations. They make available the experience of foreign nations, which in true democracy and in public welfare have in some directions outstripped what we are modestly sure is the greatest republic and people in the world. They aggregate statutes, analyze them, and prepare them for alteration. This meeting is a proof of the vitality of the writers upon government, most of whom are also teachers who sow their doctrines in the minds of those who are to be the governors of the next generation.

A greater positive force in government is the party leader: the man who can nominate candidates, draft platforms, and stir up steering-committees. If he has grown up inside a political party he is apt to feel that that is his country; and since no good legislation can be had unless his party is in power, the government of laws must wait while he is setting up fences, and pulling wires. The party leader that I have in mind is not a constructor, but a preserver of traditions and observances, who accedes to a bill, but never gives his name to it. Against that leader the most powerful engine nowadays is that swift and relentless tribunal, the direct primary.

The party leader in or out of office may be a boss; and here we strike one of the mysteries of American government, namely that so many people clamor and fight for the shell of politics and leave to some one else the kernel. James Bryce—a distinguished

former president of this Association—was almost the first man to put inside the thinking apparatus of the American people the concept that the man who dictates what the government shall do, is the government, the real sovereign. The boss sometimes is a titled political chief, governor or senator, unless he chance to be cast out of state or national office as one who unwarned departs swiftly forward, suddenly, when his fine carriage striketh a rock! The boss is a fair game for everybody; most of us look upon him as a political purple cow. For instance James Russell Lowell's disdainful couplet:

Skilled to pull wires, he baffles nature's hope,  
Which sure intended him to pull a rope.

But the boss is not an excrescence nor an unlimited monarch; he is a natural product of a government of laws devoid of human watchfulness. He is the head of a feudal system, bestowing fiefs (that is, the fourth ward) on his nobles; who in their turn muster, tax, protect and tryannize over their retainers. What a happy proof of the conservative temper of Americans! They have revamped an institution that died of old age in Europe four centuries ago. 'Tis the old story; "But seen too often, familiar with her face." After all, would not most of us rather have the boss vote with us than against us—in a good cause of course! Confucius, ages ago, had to face the problem of associating with a person "guilty of doing evil," and he falls short in trying to find an offhand solution. "The Master said, is it not said, that, if a thing be really hard, it may be ground without being made thin? Is it not said, that if a thing be really white, it may be steeped in a dark fluid, without being made black? 'Am I a bitter gourd? How can I be hung up out of the way of being eaten?' " The truth is that the boss is the one conspicuous man who has made a success in American government; he is the discoverer of governmental efficiency, and otherwise could not be a boss. By his edict he makes laws, unmakes them, and circumvents them. All that the reformer and the party leader need for complete success is to tame the boss, teach him to draw their chariot, and to roar an accompaniment to their campaign songs.

Unfortunately the boss has already been captured by a very different individual—the capitalist; who, whether in or out of the government, has in all countries become one of its ingredients. As a citizen interested in his country the man of wealth may use his power for the spread of great designs; as the owner of property which he naturally seeks to safeguard, he cannot keep out of an understanding with the actual possessors of government; but let the records of the last ten years tell us how far he has gone outside the benevolent or even the defensive attitude; and has made governments his handmaids. The protest against the money power in politics is not the cry of the demagogue, or the wail of the disappointed, but the sober conviction of a great part of the American community that the interests (usually in conjunction with the boss) have provided a private government of men, the more harmful because concealed beneath the forms of democracy, and the pretense of a government of laws. Who rules England? said a satirist in the time of Charles the First. “The King!—Who rules the King?—The Duke.—Who rules the Duke?—The Devil.—Let the Duke look to it!” Let the Duke of Fourteenth Street and the Duke of Chestnut Street look to it!

A new type of unofficial governor and inciter of government has revealed himself in our day, in the labor leader, who has taken a leaf out of the corporation’s book as to the power of organization and the advantage of controlling a legislature. There are several types of this personality, which will be more and more powerful as time goes on. First is the organizer, whose prime interest is to get his men to adhere; and whose vision goes no farther than control of the shop and the foreman; the ‘scab,’ and perhaps the policeman within hearing of the scab’s outcry. A second type is the constructive labor leader, who aims at a program of relief for the laborer; who gets into legislatures, and never lets go till a workman’s compensation act is passed; who has a positive governmental program, and perhaps aims at a permanent labor party. A third is the militant labor leader, who may or may not call himself a Socialist, but who takes the ground that all remedial laws are only a tub to the whale; who despises and hates the farmer, and the professional man as mem-

bers of the capitalistic class; who jeers at state ownership as a remedy; and whose pole star is a revolution—or as he calls it, “A Social Democracy in battle against all the possessing classes, against the whole power of the organized state.” The strongest indictment against the present government of laws is that it builds up no barrier against this onslaught by the best organized, most direct-minded and most unrelenting attack upon government which America has ever seen.

#### GREAT MEN IN GOVERNMENT

This malicious plan of planing down the talents of the nation is not much more destructive of good government than the method which shut out from office those who do not wear the party color or do not qualify for competition in the class of political mediocrities. A government of men must mean a government of skillfully and well-led men; or else government will sink below the level of the community. Our modern world knows too little of that hero worship which Carlyle so valiently defended. “We cannot look however imperfectly upon a great man without gaining something from him. . . . He is a natural luminary offering by the gift of heaven, a flaming light-fountain, as I say, of native original insight, of manhood and heroic nobleness, in whose radiance all souls feel that it is well with them.”

The New England towns have a fine mouthful of a word for their chief magistrates, “The Selectmen,” which expresses the proper type of democratic ruler. For selection violates no principle of political equality and is the world’s method of choice of rulers. In some countries certain persons called kings and queens ride in state inside the political coach; but everybody knows that the real master is the coachman; he may be designated by the sovereign, but, whether chancellor or prime minister, or grand vizier, he comes to power for no other reason than that he can drive, and will drive. The choice of officials by popular election is an automatic method of sifting out the unfit. Party spirit, political wire-pulling, and monied interests may interfere; but in any fair election the presumption is that the man who is elected



by a clear majority is the man whom the majority of the voters want. But given an honest ballot, a method of nomination under which popular men have a reasonable chance, clear-cut issues, and a chance at reasonable publicity; and the people ordinarily get what they want in officials and in government. Many communities have very modest moral requirements; and in a few, the majority would rather have a blackguard for a governor or a United States senator than a man of character; but when the American people wanted Washington and Jefferson, Jackson, Lincoln and Cleveland, they got them.

An election with real candidates instead of dummies, and real issues instead of shop-worn platitudes, is an appeal to high qualities in the voter. Here comes in the force of personal friendship, which some good people would banish from public affairs. We need not go to the length of the politician's definition of the really good man, "One who is willing to go to Hell for his friends," though that is not far from Jonathan Edwards's conception of the saint. The great solvent of society and government is confidence in our fellows, and admiration for high and bold character; "Great let me call him, for he conquered me." There is no greater force in life or politics than personal admiration for a great man. Such a man as Kung-shuh Wan, of whom Kung-ming Kea said "My master speaks when it is time to speak, and so men do not get tired of his speaking. He laughs when there is occasion to be joyful, and so men do not get tired of his laughing. He talks when it is consistent with righteousness to do so, and so men do not get tired of his talking."

The support of character and strength in a public man takes the life out of corrupt political combinations. The great man is the known man, whose private and public character are spread upon the records. His opponents in the canvass, and a watchful press see to it that none of his peccadillos escapes notice. The nation-wide candidate needs no biographer and no recording angel, for he cannot sneeze without accountability to the press. The big candidate is an appeal to individuality; a denial of the anarchistic doctrine that a hundred small men united in a committee have as much brains as one large man. He is a standing

protest against over-organization in politics, a return to the primordial practice of getting to your principle by backing up the man by whom it is illuminated.

#### GREAT LEGISLATORS

Where does the great man find his opportunity to lead a peaceful army in a campaign of mercy? Sometimes in breaking through previously accepted forms of government by a revolution; but such men always want to replace out-worn forms with new types, in which again they shall be prime movers. When Sam Adams has destroyed his colonial government, he joins in making the Massachusetts constitution. For nobody between Ghengis Khan and the suffragettes has cared to spend a lifetime in smashing and destroying. The modern leader is an upbuilder who not only must frame a government, but must apply it to the new problems of social welfare.

The natural place for modern constructive leadership everywhere seems to be in a national legislature. The statesman who shows prowess in the hand-to-hand conflict of debate, who can answer ticklish questions adroitly, and turn the point against his adversaries; who can hold his fellows to a legislative task, and guide a measure through the mazes of parliamentary rules, is the man who ought to be largest in a government of men. Observers have long since pointed out that the parliamentary system is better than the congressional in offering an arena for national competition; and in demanding of the legislator that he shall also be a skillful administrator. Gladstone, Cavour, Bismarck hewed their way to the front as much by their power of persuading or brow-beating their legislative chamber as in carrying laws into execution.

That advantage we have not, either in our state or national systems of government; and it is a striking fact that since John Quincy Adams no President of the United States has harked back to a previous record of great success in congress, except Polk, Buchanan, the short-lived Garfield, and McKinley. Yet the legislator's place is one that calls for leadership. A State legis-

lature, and still more a congress, is a complicated concern, in which experience, good nature and foresight push a man forward. Skill in argument and power of exposition count for less than ability to deal with other men; to reconcile differences; to suggest compromise bills and middling phrases; to touch the strings of party loyalty; and to infuse into public life a genuine devotion to the public service. This was William McKinley's forte—long before he had national fame, he became easily the strongest man in the house, because he could bring things to pass.

The great man in American legislatures finds a narrow field; first of all because his official life is so insecure. The first-class English or French statesman may count upon a career, because he can always find a constituency. He is not drawn away to executive posts, for those posts come to him as a successful member of his legislature. His activity is not stifled in committee discussions, and he is not subject to the effect of the American machinery of parliamentary law, which crushes any presumptuous Laocoon.

American legislatures have striven to find a way out of their labyrinth through exalting a speaker; who has become the principal parliamentary leader. That works well only so long as the speaker is undeniably great in his makeup. Henry Clay, James G. Blaine, John G. Carlisle, Thomas B. Reed, would have been remarkable anywhere. When the speaker is a weak man, somebody else who controls him becomes the actual speaker; when he is a strong but narrow and obstinate man, his fellow members at last revolt. The speakership makes nobody great.

Nobody is unaware that we need greater personality in our legislatures; one proof is the number of men of force and action who withdraw even from the federal house and senate because there is too little opportunity for any one man to impress his views upon his fellow members; because there are so many chances, outside of legislative life, for a man of force to make himself felt. Why, there is hardly a distinguished member of congress who may not acquire a larger reputation and have a wider influence by resigning and taking a retainer to show his clients how to avoid and nullify the laws which he would other-

wise be making! Here is where we most need the government of men! We demand somebody who will stop the school-boy practice of manoeuvring and voting just for the sake of putting the other fellows in a hole, instead of coming forward with a positive program. No country more needs both able and high-pitched legislators than our own; we are crowded both by our federal system and by the growth of new questions, political, social, and economic, into a mass of statutes which threaten to overwhelm us with a government of undigested laws. Who will guide us out of that Serbonian bog?

#### GREAT JUDGES

The judges of our courts for many years have tried to build a causeway which will sustain our sinking feet. The faults of our legislation have thrown upon them a task almost unknown in other lands, of harmonizing statutes which conflict with others within the same State; which jar with those of other States; which overlap with federal enactments. Setting out to decide private cases arising out of a government of laws, the judges have felt compelled to define the outer boundary of the total area of governmental power; to build a wall between federal and State authority; and to stand by the division between the three departments of government. For such mighty powers, for such final decisions on the authority of so many people, for the task of arbiter between such great states and such powerful organizations, there is need of great men in the judiciary.

Have such great men shown themselves in the American courts? Many leaders should have appeared among so many chosen spirits: since 1789 six hundred different persons have been commissioned as federal judges; and thousands as State judges. Yet public leadership is hardly to be found in the State courts, though from them have graduated many men of later eminence in other fields. The one nationally renowned State jurist is Chancellor Kent. We think our supreme court remarkable for its abilities, and it is remarkable: nevertheless, in the whole list of justices can be found only half a dozen names of men who

during their service were known throughout the country; and most of those were leaders in other fields. Is John Jay chiefly known for his juristic career, or William Patterson or Samuel Chase, or John McLean, or Levi Woodbury, or Charles E. Hughes! In the history of the supreme court there have been but two resplendent names: John Marshall and Joseph Story. Each of them an *anax andron*—a king of men; but when Roger B. Taney tried to make himself a political leader from the bench, he miserably failed. In the government of laws the official expounders of laws do not lead.

For this negative position of the judiciary, there are many reasons. It is our tradition that judges shall be set outside of parties and of partisanship; that their proceedings shall be measured and dignified; that while a case is pending they shall be protected from public criticism which might affect their minds or the decision of the jury. They have gone farther, and some courts set up the impossible doctrine that their decisions are duty-free of criticism, either from men in other departments of government, or the press, or private individuals. This very sacredness is one of the things that prevents judges from setting the pace for the people. No man protected by an iron railing can lead a cavalry charge. Whatever their desire, direct positive aggressive leadership is of course impossible for the judges, because they do not initiate law but expound it; they cannot invent test cases in order to express sound views; but must wait for such cases as come before them.

The trouble is that a considerable part of the American people feels that the judges are actually assuming a leadership and authority which is not conferred upon them. Even men learned in the law in unbalanced moments will admit that the judges are not so Rhadamanthine as they seem. The judges never can be leaders so long as there is a widespread popular belief that they do not perform their functions well. As witness the people's counsel, Mr. Dooley: "So, Hinnissy, I'd like to be a judge in a high court, dhreamin' th' happy hours away. No hurry, no sthrivin' afther immejet raysults, no sprintin', no wan hollerin' 'Dooley, J. hurry up with that ne exeat,' or 'Dooley, hand down

that opinyion before the bathtry gives out.' A jury is f'r hangin' ivry man, but the high coort says: 'Ye must die, but take ye'er time about it an' go out th' way ye like.' If I wanted to keep me money so that me gran'-childer might get it f'r their ol' age, I'd appeal it to th' supreme coort. . . .

"I don't see," said Mr. Hennessy, "why they have anny juries. Why don't they thry ivery man before th' supreme coort an' have done with it?" "I have a bettther way than that," said Mr. Dooley. "Ye see they're wurrukin' on time now. I wondher if they wudden't sthep livelier if they were paid be th' piece."

Possibly Mr. Dooley is cynical; but the American people, which avoids contempt of court by not complaining at the law's delays, may at least complain at the delays in public commissions on the law's delays. Leaving undiscussed the question whether the courts have or have not a definite right to hold statutes unconstitutional, people have somehow a feeling that when after thirteen years and twenty-six hearings before New York judges a suit for payment of goods delivered was the other day still unsettled, the judges are not competent to be public leaders. For whatever reason, the judiciary in state and nation does not seem to be doing a clean and expeditious job; which may account for the fact that appointive judges seldom enter another field of political life with success.

The sole judicial officer who has a first class opportunity to show his quality and to please the people is the prosecuting attorney. This is the section of the judiciary department in which initiative, quickness and the willingness to give the public the benefit of the doubt in criminal cases, count the most. From this school have graduated some of the most energetic men in the country, including several later reform governors, Folk and Hadley, and Hughes (who was made governor because of the pluck he showed in the insurance investigation). The reformer sometimes defies the law and feels virtuous; the prosecutor enforces the law and feels more virtuous still. His the proud duty of leading a storming party against what people hate most: organized vice; graft percolated police; bribe-taking officials; over-grasping corpora-

tions! His the opportunity from day to day to be featured on the first page of the newspapers; to denounce spiritual wickedness in high places; and to send rascals to their well-earned punishment. Yet here again, the prosecutor's term is short, and his only hope of permanent leadership is to be taken out into a larger and non-judicial field.

#### GREAT EXECUTIVES

"The Master said, 'To rule a country of a thousand chariots, there must be reverent attention to business, and sincerity; economy in expenditure, and love for men; and the employment of the people at the proper season.'" Where shall the leader of the country of a million chariots be found? Confucius had in mind the constructive statesman who makes as well as applies law. And under the American system the clearest and sharpest of these forces appear to be lodged in the executive.

In nation, States and municipalities alike, the executive heads are circumscribed; they have a power of appointment, usually with the consent of somebody else; a still more limited power of removal; some authority over the military and police; a circumscribed relation to legislation; and a general supervision over the executive service. From the beginning, however, Presidents have asserted larger powers; and in course of time governors and mayors also have received them.

Executive heads are few in number compared with legislators and judges; they are chiefs of an ever budding civil service; hence they are much in the public view; and because conspicuous, rather than because powerful, they have made themselves the battering rams of American politics. Laws are administered by men; and in the rush and crush of modern life the reign of pure law is subject to the human weakness of those who put it into force. We know that many good laws are no laws if the mayor, or the chief-of-police for the time being, so wills it; we know that technical and difficult laws are often carried out by those who have not the expert skill and knowledge to make them work; we know that laws are unevenly applied by administrators and judges. Many of these calamities come about because of a

refusal to recognize that laws are contrivances of men, and by men must be carried out. Says Abu Du'ad "Thinkest thou that every man is a man; every fire that burns at night a fire?" A law is not a law except when vitalized by discriminating men.

In city governments the power of the mayor has been enlarged till in more than two hundred cities it has been merged in a commission which is a daring and apparently a successful attempt to combine legislative and executive power in the hands of a small body of leaders. This is a denial of the worshipful doctrine of the separation of powers, and an object lesson in what can be done by many voters putting a big responsibility into few hands.

State governors are of three types. First, the man who has come through the hawse-hole of politics, working his way from smaller offices up to the governorship; second, the commercial governor, who comes over the quarter-deck, chosen partly for his ability to contribute to party funds, and partly for his business capacity. Third, a man, sometimes politician, sometimes a man of wealth, sometimes just himself, who as governor makes himself the concentrator of public opinion—and such governors become national figures. When Governor Hughes was saving his Commonwealth from the degradation of a partnership in race-track gambling, the whole country watched him and rejoiced at his success; when Governor Johnson put himself at the head of a body of people who were trying to redeem their state from chattel slavery to a corporation, the Union applauded. Without much formal enlargement of his powers, the governor has discovered that if there is a piece of work to do, and he can make a clean issue against those who are trying to prevent its being done, he can count indefinitely on public support; and can compel an unwilling legislature to do the will of their common master—the people.

Here again we have a divergence from the old-fashioned government of laws, an unwarranted simplification of government, an unlicensed legislative chieftain, a premier, a man regardless of the previous question, who puts forward the measures on which a legislature must take action; and therefore a man who inspires the enthusiasm of the people and their support.



What of the President of the United States—Wallace Irvin pokes fun at him through his Japanese Boy. “A President should be like a piano of upright build with some grand square qualities. He should be the First Magistrate and also the Principal Policeman in the kingdom. He should be good as he are lonesome. He should treat all Trusts in a beastly manner and uphold Truth and Justice so long as they do not hurt National Prosperity. Malefactors, etc., need not cringe off from me for fearful that I will burn up America when I am elected. Because I can’t. A President is only a bluff. He don’t amount to a rolling-pin. Hon. American Govt. are a system of checks and balances, so a President are deliciously powerless when he wish to reform it. I promise to be as helpless as possible. I believe in deep breathing & out door exercise, but I are cross about that woolley tariff of sheep - - - - Otherwise I are willing to act like a Majority on all occasions.”

This theory of presidential power is a little sketchy, but it sketches the belief of a great number of Americans that the natural leader of this country is the President of the United States. There are many positive reasons for this idea: The President is far and away the most conspicuous person in the nation, exceeding in his permanent newspaper space the pitcher of the victorious team in the inter-world baseball series; and his duties call for large and varied abilities. As the head of the nation in foreign relations; as commander-in-chief of the only army and navy; and as possessor of broad authority set forth in the Constitution of the United States, the President is a great constitutional figure. With three or four exceptions, no man has ever reached that dignity who was not unusual; and few have failed to take with them when they left the office the good will and respect of their countrymen.

Good will and respect alone are not sufficient for a government of men; simply in order to carry out their own unquestioned executive powers our presidents must also show rare force, backed up by popular sentiment. The government is so big that the presidency is becoming clumsy, and it takes genius to keep it out of tangle. Do you realize that the executive service of the Union

is passing through a portentous change? The public servant has been properly protected by civil service rules from removal simply to make room for somebody else; but we are approaching something like the abandoned doctrine of a freehold in office, best illustrated by the New York police, a military force no member of which can be got rid of without a process resembling a judicial trial, on evidence which presumably would convince a jury. Perhaps a similar status is approaching for federal employees. They are forming associations which have had the aim and effect of driving out of congress members who stood against increasing their salaries. These labor unions are pretty certain to seek alliance with the unions of the employees of private concerns. It is painfully likely that in course of time these associations will demand a right to pass upon removals and possibly upon appointments. Nothing can successfully resist such a trituration of the federal government except a vigorous President, a big man in every term.

The need of great men in the presidency is further shown in the legislative and judicial powers which the president exercises with little question. By proclamation or public announcement Presidents (under authority of acts of congress) admit States and apply tariffs. Outside of acts of congress the President and the heads of departments by executive orders and department circulars make rules which have the force of law for government employees, and sometimes for other people too. The administrative decisions of heads of departments or of bureaus, establish without appeal issues of fact, and lay down principles of law.

The President is more and more becoming the point of departure for new legislation; his powers to make recommendations to congress, and to veto bills, give him an influence which is supported by the arguments and statements of executive officials to congressional committees. The President has practically thirty-two votes in the senate and near a hundred and forty in the house; and his messages over-ride attempts of committees to pocket legislation.

Larger than his constitutional authority is his unwritten power over legislation. As Mr. Dooley puts it in describing the effect

of a President's message: "'An' what did congress say?' Mr. Hennessy asked. 'Congress didn't say anything,' said Mr. Dooley. 'Congress yawned. But Congress'll get th' rale message whin it goes over to th' white house wan at a time to see about th' foorth-class post-masters.'" That rale President's message goes not only to members of congress but to heads of departments, to steering-committees, to party leaders, to powerful editors.

In fact a large part of the business of modern Presidents is to throw the searchlight upon measures pending in congress; by public addresses, by interviews, by signed articles in periodicals, by minatory messages to congress (meant quite as much for the general reader), by all legitimate means, the President puts before the people the necessity of new laws, just as the prime minister in England sets them forth in answer to questions, and in speeches in the house of commons. You may shudder at it or you may rejoice in it, but the power of a President backed up by the public confidence, has repeatedly compelled a reluctant majority in both houses to carry out his program. "He that seeketh to be Eminent amongst Able Men, hath a great Taske: but that is ever good for the Publique."

#### CONCLUSION

Here are the elements of that government of men which is to supplement, but not to supersede, the government of laws. It is simply an attempt more directly to apply the people's will to the people's benefit: and yet there is no magic in government, which can guarantee the aptness of the people's will; there never can be any government in the United States better than the people wish to have it. But I believe that it is the people's will that all government should be more simple, more direct and more efficient; and to that end we need to search out and get in action great personalities.

Not only must the people rule, but they must rule over their fundamental law. The doctrine of the sacredness of the federal constitution has long since ceased to terrify would-be amenders. Precisely because changes in government are going on, and will go on, there is a need for personal action against the radical and

the dangerous. Nowhere is intelligent leadership more needed at this moment than in the great constitutional changes which have already come over the states and will certainly come over the nation.

What we most need now is men. Not sordid creatures like those "Men of Atlas who curse the sun that galls them from dawn to dark, who never dream, who have no language and are quite devoid of civility:" but men who have souls straining to attach themselves to a great man. The common weal, the will of the people, is manifold. No system of laws, however inspired, can make that will cohere. Men are the elements, men are the agents, men are the solution. Gone is the terror of destroying the balance of powers! Whose are these powers? And to what purpose a balance if it no longer weighs? We need confidence in trained men, belief in experts, joyful affection for those who are to carry out the people's will. Thus shall we realize Milton's vision. "Methinks I see in my mind a noble and puissant nation rousing herself like a strong man after sleep, and shaking her invincible locks; methinks I see her as an eagle mewing her mighty youth; and kindling her undazzled eyes at the fierce mid-day beam."